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|  | THE WESTERN        | I DISTRICT OF OKLAHOMA           | APR 1 3 2012   |
| EDUARDO LEIVA,<br>vs.<br>WARDEN TRAMMI | Petitioner,<br>EL, | )<br>)<br>)<br>)<br>No. CIV-12-3 | ROBERT D. DENNIS, CLERK U.S. DIST, COURT, WESTERN DIST, OF OKLA BY |
|  | Respondent.        | )                                |  |
|  |                    | ORDER                            |  |

On April 3, 2012, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation in this matter and, having determined that petitioner Eduardo Leiva had adequate funds in his inmate savings account to pay the filing fee, he recommended that the Court deny Leiva's request to proceed without prepayment of fees.

Leiva was advised of his right to object, <u>see</u> Doc. 5 at 2, and the matter now comes before the Court on Leiva's Objection to Magistrate's Report and Recommendation and Notice to Court. <u>See</u> Doc. 6.

Leiva has informed the Court that on April 10, 2012, he submitted a disbursement form to prison officials at Mack Alford Correctional Center ("MACC") to mail the filing fee to the Clerk of the Court, but that prison officials "may delay [payment of the filing fee] . . . without a direct order from this Court to [the] . . . trust fund officer at . . . [MACC] to take the \$5.00 filing fee from [his] . . . prison savings account and forward it to this Court." Id.

As Magistrate Judge Bacharach stated in his Report and Recommendation,

Oklahoma law governing the statutory savings account expressly allows inmates to withdraw funds from the account to pay fees under 28 U.S.C. § 1911, et seq. Okla. Stat. tit. 57 § 549(A)(5); see also Williams v. Austin, 890 P.2d 416, 418 (Okla. Ct. App.1994)("A prisoner's savings held by the

Department of Corrections may be used to pay fees or costs in filing a civil action.")(citations omitted)).

Doc. 5 at 1 n.2.

Leiva not only is able to pay his filing fee from his inmate savings account because he has sufficient funds to do, but also is responsible for paying the filing fee without further order of the Court.

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation [Doc. 5] issued on April 3, 2012;
- (2) DENIES Leiva's Motion for Leave to Proceed Pursuant to 28 U.S.C. § 1915 [Doc. 2] file-stamped March 28, 2012;
- (3) DECLINES to issue "a direct order" to prison officials as requested by Leiva, but ADVISES him that he may use the instant Order in his efforts to seek access to his inmate savings account to insure timely payment of the filing fee;
- (4) further DECLINES Leiva's request for a hearing on the issues presented in his Objection to Magistrate's Report and Recommendation and Notice to Court and his request for an order directing the respondent "to immediately release [him] . . . to federal authorities for deportation back to Mexico, without delay," Doc. 6 at 1;
  - (5) ORDERS Leiva to pay the filing fee of \$5.00 in full on or before May 4, 2012; and
- (6) ADVISES Leiva that his failure to pay the filing fee in full or show good cause for his failure to do so by May 4, 2012, will result in the dismissal of this matter without prejudice.

ENTERED this /3th day of April, 2012.

LEE R. WEST

UNITED STATES DISTRICT JUDGE